

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

## STAFF REPORT

Hearing Date/Agenda Number  
P.C. 5/8/02 Item: 4.e.

File Number  
TR 01-09-116

Application Type  
Appeal of a Tree Removal Permit Denial

Council District  
1

Planning Area  
West Valley

Assessor's Parcel Number(s)  
377-06-006

### PROJECT DESCRIPTION

Completed by: **Darren McBain**

Location: **1015 Tulipan Drive**

Gross Acreage: **0.06**

Net Acreage: **0.06**

Net Density: **N/A**

Existing Zoning: **R-1-8(PD) Residence**

Existing Use: **Single-family attached residence**

Proposed Zoning: **No change**

Proposed Use: **No change**

### GENERAL PLAN

Completed by: **DM**

Land Use/Transportation Diagram Designation  
**Medium Density Residential (8-16 DU/AC)**

Project Conformance:  
☐ Yes ☒ No  
☒ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: **DM**

North: **Single-family attached residential**

**R-1-8(PD) Residence**

East: **Single-family attached residential**

**R-1-8(PD) Residence**

South: **Single-family attached residential**

**R-1-8(PD) Residence**

West: **Single-family attached residential**

**R-1-8(PD) Residence**

### ENVIRONMENTAL STATUS

Completed by: **DM**

☐ Environmental Impact Report found complete on  
☐ Negative Declaration circulated on

☒ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: **DM**

Annexation Title: **Johnson No. 1**

Date: **3/5/56**

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval  
☐ Approval with Conditions  
☐ Denial  
☒ Uphold Director's Decision

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_  
☒ Action  
☐ Recommendation

### APPLICANT/OWNER/DEVELOPER

**Richard Walter**  
**1015 Tulipan Drive**  
**San Jose, CA 95129**

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PUBLIC AGENCY COMMENTS RECEIVED

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Completed by: DM

Department of Public Works

None received.

Other Departments and Agencies

None received.

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GENERAL CORRESPONDENCE

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See attached memos from Ralph Mize (City Arborist) and Blair Glenn and James Scott (private Certified Arborists)

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ANALYSIS AND RECOMMENDATIONS

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**BACKGROUND**

On June 18, 2001, the applicant/appellant submitted an application to allow removal of one Valley Oak tree approximately 216 inches in circumference. A Tree Removal Permit is required under Title 13 of the San Jose Municipal Code for the removal of any tree located on private property when the trunk has a circumference of 56 inches or greater measured two feet above the surrounding grade.

The subject site is developed with a single-family attached residence that was built as part of a larger tract in 1970. The subject tree is a native species and this specimen appears to predate European settlement in the area, although its precise age is unknown. The tree, which is one of the largest trees in the vicinity and is highly visible from the surrounding area, is located in the front yard of the residence. The trunk of the tree is approximately eight (8) feet from an attached garage with an upstairs bonus room. This tract of residences has an unconventional site design in that the main residence is set back behind the street-oriented garage/bonus room. The subject tree is located approximately 40 feet from the main residence. Some of the tree's canopy hangs over portions of the main residence.



The reason stated in the application for removing the tree is that the branches that hang over the applicant's residence pose a threat of falling and damaging the structure and/or injuring the people inside. The applicant, who purchased the property in 1998, has indicated that a limb 24 inches in diameter and 40 feet long fell from the tree in May of 2000. Although no property damage occurred at that time, the applicant

wishes to remove the tree as a precautionary measure. The applicant has submitted two private Arborists' reports that address the condition of the tree (see attachments).

The purpose of the Tree Removal Permit process is "to promote the health, safety, and welfare of the city by controlling the removal of trees in the city, for wanton destruction of trees detracts from the scenic beauty of the city, causes erosion of topsoil, creates flood hazard and risk of landslides, reduces property values, increases the cost of construction and maintenance of draining systems through the increased flow and diversion of surface waters, and eliminates one of the prime oxygen producers and prime air purification systems in this area." [Municipal Code, Section 13.32.010]

In order to grant a Tree Removal Permit, the Director (or the Commission on appeal) must make one or more of the following Tree Removal findings:

1. That the condition of the tree with respect to disease, danger of falling, proximity to existing or proposed structure, and/or interference with utility services, is such that public health or safety requires its removal; and
2. That the location of the tree with respect to the proposed improvement unreasonably restricts the economic development of the parcel in question; and
3. That the tree affected is of a size, type and condition, and in such a location in such surroundings that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010

In November 2001, staff told the applicant that staff could not support the proposed tree removal. After a subsequent public hearing, the Director of Planning denied the subject Tree Removal Permit on March 8, 2002, allowing the applicant an opportunity to appeal to the Planning Commission. The Director's decision to deny the permit was based on the following key facts:

1. The applicant submitted an arborist's report that stated that limb failure will continue to be a concern for this tree in the future. The report indicated that the tree could be made safer by removing some of the tree's heavy limbs, although pruning could potentially result in a poorly shaped and under-foliated tree.
2. The applicant has not submitted any substantial evidence to establish that pruning the tree (or other possible measures short of removal) in a way that would significantly reduce the risk of potential limb failure would not be a reasonable alternative to removal.
3. The City Arborist has inspected the tree and recommended that further analysis, including a resistograph analysis, be performed before approval of removing the tree. Alternatively, the City Arborist recommended that the tree be preserved, but that its condition be periodically monitored.

Based on these facts, the Director of Planning concluded that none of the Tree Removal Control findings identified above could be made at this time for the proposed removal of this tree, and denied the permit. On March 18, 2002, the applicant appealed the Director's decision to deny the subject permit. On April 11, the applicant submitted an additional private arborist's report (attached) that addresses the tree's condition. On April 16, Ralph Mize (City Arborist) visited the site and forwarded to Planning Staff a recommendation

(see attached) that the tree be preserved. The recommendations of the private arborists and the City's arborist are discussed in greater detail in the analysis section.

## ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act (CEQA), in that the project is consistent with the "operation" of an existing facility and not an expansion of use (Section 15301).

## GENERAL PLAN CONFORMANCE

The project site has a designation of Medium Low Density Residential (8.0 DU/AC) on the San Jose 2020 General Plan Land Use/Transportation Diagram. The existing single-family residence is consistent with this designation.

However, it is staff's opinion that the proposed removal is inconsistent with the Urban Forest section of the General Plan's Natural Resources Policy. The Urban Forest Goal is to "preserve, protect, and increase plantings of urban trees within the City." Urban Forest Policy #3 encourages the maintenance of mature trees on private property and states that mature trees should only be considered for removal where all reasonable preservation measures have been evaluated. Removal of the subject tree would conflict with the Urban Forest Goal, in that:

1. The tree is a significant native Valley Oak tree (see Analysis section, below) that was intentionally preserved when the property was developed in the 1970s.
2. The Director of Planning concluded that the Tree Removal findings identified in Chapter 13.32, cannot be made for this project
3. Reasonable alternatives to removal of the tree have not been fully explored (see Analysis).

Removal of this tree would also conflict with the Woodlands, Grasslands, Chaparral, and Scrub section of the General Plan's Natural Resources Policy. Recognizing the importance of native species such as Valley Oaks, this section of the policy states that "the City should preserve and protect oak woodlands, *and individual oak trees*, to the greatest extent feasible" (italics added).

## ANALYSIS

The subject tree is a very large Valley Oak tree. The Valley Oak is a native species that is highly valued for its aesthetic qualities and is considered an enduring symbol of the local area's natural history. Ralph Mize, the City Arborist, has referred to this particular tree as a "magnificent specimen" (see attached memo) and recommends that the tree be preserved. See below for further discussion of his recommendations.

In the appeal of the Director's decision to deny the Tree Removal Permit, the applicant argues that the tree is a hazard and that removal of the tree is the only viable solution. Although the tree is healthy and vigorous with no obvious signs of decay, one of its large branches fell to the ground in May of 2000. The applicant wishes to remove the tree as a pre-emptive measure to prevent any additional branches from falling and causing harm to structures and/or people beneath the tree.

The applicant has submitted two reports from private Certified Arborists (attached) that discuss the physical condition of the tree. The report by Blair Glenn states that the heavy limbs over the structure will always be a cause of concern to the residents. Mr. Glenn indicates that major weight reduction (i.e., removal of some of the tree's branches) would make the tree much safer, but "it could be easy to over-do this type of trim, leaving a poorly shaped, under-foliated tree. If a severe weight reduction is desired, then it would be prudent to discuss and possibly mark all the selected large limbs to be removed, for approval and evaluation of what the tree will ultimately look like." The report included photographs that identified some of the branches that might potentially be removed as part of a major weight reduction. However, a more thorough and detailed evaluation, as suggested by the arborist, was not subsequently submitted to staff for discussion as an alternative to removal. The applicant opted to move forward with a request for removal of the tree.

The second private arborist's report performed by James Scott, states that, while the tree could be made safer through significant pruning, to do so "would certainly require" removal of more than 20% of the tree's crown foliage. This amount of foliage removal would exceed the standards recommended for mature trees by the International Society of Arboriculture. Mr. Scott also states that some cabling of the tree's branches would be required in order to make the tree safer. However, the report does not include a detailed analysis of which branches should be removed in order to effectuate a major weight reduction and substantially reduce the risk of branches falling from the tree in the future. The report does not specifically discuss what amount of cabling would be necessary to make the tree safer. No exhibits relating to specific sections of the canopy that should be removed, or how the tree would look afterward were submitted with the report.

On April 16, Ralph Mize, the City Arborist, visited the site and evaluated the tree. Mr. Mize recommended that the applicant work with a "consulting" arborist (different than certified arborist) to develop a specific program of pruning, and possibly cabling, to reduce the weight of the branches that hang over the residence and lessen the potential for limb failure. Mark Beaudoin, the previous City Arborist who has since retired from public service, also reviewed the application in October of 2001 and recommended that the tree be preserved and that its condition be monitored on a yearly basis for signs of potential problems.

The applicant has stated that removal of the tree is the only means of ensuring that the tree will not be a hazard. Similarly, the private arborist's report prepared by Blair Glenn notes that, even after significantly pruning the tree, "there is no way to ensure that this tree will be safe." However, this statement applies to any other tree in the City that partially overhangs structures, walkways, or any other space used by people. The City's Tree Removal Permit process requires that, in order to grant the permit, the Director of Planning (or the Commission on appeal) must be able to make one or more of the Tree Removal findings that are clearly defined, as identified earlier in this report.

In this case, Tree Removal finding #2, *That the location of the tree with respect to the proposed improvement unreasonably restricts the economic development of the parcel in question*, does not apply, in that the parcel is already fully developed. The question at hand is whether the subject tree meets the criteria for Tree Removal findings #1 and #3.

- Finding #1: *That the condition of the tree with respect to disease, danger of falling, proximity to existing or proposed structure, and/or interference with utility services, is such that public health or safety requires its removal.*

Analysis: The tree has dropped at least one large limb in the past, and staff acknowledges the possibility that some type of limb failure could potentially occur in the future. However, this does not make the tree inherently unsafe to the extent that it should be removed, as opposed to significantly trimmed and then periodically monitored in the future. Unlike the portions of the tree's structure that have now been inspected and would remain after pruning the tree, the large limb that failed previously may have been decayed and weakened. The City Arborist, Ralph Mize has evaluated the tree and the private arborist's reports that were submitted by the applicant, and concluded that, instead of removal, it would be appropriate to preserve this

“magnificent specimen” and make it safer by judicious use of pruning techniques and possibly some amount of cabling. Mr. Mize has also stated (see attached memo) that, while the “sudden limb drop” syndrome referred to by the applicant is a concern for managing Valley Oaks and other large trees, the problem can be addressed by checking for poorly attached branches and reducing the branches’ weight. Based on the recommendations from the City’s tree expert, the materials that were submitted with the application, and on observations in the field, it is staff’s opinion that the applicant has not demonstrated that the tree represents a hazard to the degree that public safety requires its removal.

- Finding #3: *That the tree affected is of a size, type and condition, and in such a location in such surroundings that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010*

Analysis: The tree is very large, healthy specimen of an important native species. The City Arborist has stated that feasible alternatives to removal of the tree exist and should be explored. Based on these facts, it is staff’s opinion that removal of the subject tree would be contrary to the purpose and intent of the City’s policies related to Tree Removal. The applicant implies in the appeal that cabling is not appropriate as a means of stabilizing the tree because the tree does not have “significant historic or landscape value.” However, planning staff and the City Arborist believe that the tree is, by virtue of its size and type, a significant asset from both a historical and an aesthetic standpoint. The tree is highly visible from the nearby surrounding area.

Conclusion: Because the necessary findings for approval of a Tree Removal Permit cannot be made, staff recommends that the Commission uphold the Director’s decision to deny the subject Tree Removal Permit. This is not to say that the tree should never be removed under any circumstances. Trees change over time, and the applicant is not precluded from filing a Tree Removal Permit application in the future, should the condition of the tree deteriorate to a point that it presents an imminent danger to nearby residents and/or private property.

## PUBLIC OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 300 feet of the project site. Staff has been available to discuss the proposed tree removal with members of the public.

## RECOMMENDATION

The Planning staff recommends that the Planning Commission uphold the Director’s decision to approved the requested Tree Removal Permit with and include the following facts and findings in its Resolution.

1. The project site has a designation of Medium High Density Residential (8-16 DU/AC) on the adopted *San Jose 2020 General Plan/Land Use Transportation Diagram*.
2. The project site is located in the R-1-8 (PD) Planned Development.
3. The project site is approximately 0.06 gross acre in area.
4. The project site is located in established single-family residential neighborhood that was built in 1970.
5. The subject tree is a Valley Oak approximately 216 inches (18 feet) in circumference.

6. Valley Oaks are a native species that are considered a valuable natural resource.
7. The tree is believed to be more than a hundred years old.
8. The tree was preserved when the property was developed in the 1970s.
9. The tree is located in the front yard and is substantially visible from the street and other properties.
10. The tree is located approximately eight (8) feet from a detached garage which also includes a second story bonus room.
11. The primary dwelling unit is located approximately 40 feet from the subject tree.
12. The applicant filed Tree Removal Permit file no. TR01-09-116 on June 18, 2001.
13. Title 13 of the San Jose Municipal Code establishes findings that are required to be made in order to warrant removal of a tree larger than 56 inches in circumference. Said findings include the identification that the tree, with respect to disease or danger of falling is such that public health or safety requires its removal.
14. A tree survey by a certified Arborist, hired by the applicant, indicates that the tree is generally healthy and could be made relatively safer by removing some of the trees heavy limbs.
15. The City Arborist has inspected the tree, and has stated that there are feasible options to its removal.
16. The City Arborist has termed the tree a “magnificent specimen.”
17. The applicant has not submitted any substantial evidence to establish that pruning, cabling, and/or other possible measure short of removal, in a way that would significantly reduce the potential risk of limb failure, would not be a reasonable alternative to removal.
18. Under the provisions of Section 15304 of the *State Guidelines for Implementation of the California Environmental Quality Act* (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
19. The subject Tree Removal Permit (TR01-09-116) was denied by the Director of Planning, Building and Code Enforcement on March 8, 2002
20. The applicant appealed the Director’s denial of the subject Tree Removal Permit on March 8, 2002.
21. The General Plan’s Urban Forest Goal is to “preserve, protect, and increase plantings of urban trees within the City,” and states that mature trees should only be considered for removal where all reasonable preservation measures have been evaluated.
22. The General Plan’s Woodlands, Grasslands, Chaparral, and Scrub Policy states that “the City should preserve and protect oak woodlands, and individual oak trees, to the greatest extent feasible.”

The Planning Commission concludes and finds, based upon an analysis of the above facts, that:

1. Removal of the tree is not specifically inconsistent with the General Plan Land Use/Transportation Diagram designation of Medium High Density Residential (8-16 DU/AC); however, the project is not consistent with General Plan Urban Forest Policies Two and Three which indicate that preservation measures should be fully explored prior to tree removal.
2. The project is in compliance with the California Environmental Quality Act (CEQA).
3. That the condition of the tree with respect to disease, danger of falling, proximity to existing or proposed structure, and/or interference with utility services, is not such that public health or safety requires its removal.
4. The location of the tree with respect to the proposed improvement does not unreasonably restrict the economic development of the parcel in question.
5. The tree affected is of a size, type and condition, and in such a location in such surroundings that its removal would significantly frustrate the purposes of this chapter as set forth in Section 13.32.010.
6. The Valley Oak Tree is of considerable size, having a trunk circumference of almost 18 feet and is a significant natural landmark in the neighborhood in which it is located.
7. There is no evidence that the tree is diseased.
8. There is no evidence that the tree, with appropriate pruning, would cause substantial danger of falling in accordance with the findings required to justify removal as set forth in Title 13 of the San Jose Municipal Code.